DOCUMENT RESUME

ED 384 630 TM 023 780

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TITLE Use of a Statement of Test Taker Rights in Employment Testing.
PUB DATE 20 Apr 95
NOTE 11p.; Paper presented at the Annual Meeting of the American Educational Research Association (San Francisco, CA, April 18-22, 1995).
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Civil Rights; Confidentiality; *Court Litigation; Ethics; Information Policy; *Occupational Tests; Personnel Directors; *Personnel Selection; Religious Discrimination; Test Construction; Testing Problems; Test Results; *Test Use

ABSTRACT

Professionals often seem to view guidelines, standards, and the like, not to mention legal mandates, as adding to their work load. It is argued that a widely promulgated set of test taker rights would actually make the work of personnel selection professionals easier. The California court case Soroka v. Dayton-Hudson Corporation, in which test takers sued because of some questions pertaining to religion on the employment test, illustrates some of the pitfalls of personnel selection tests as they are generally administered. A 12-point "Rights of Test Takers" is proposed that clarifies that test takers have rights that include courteous and fair treatment, explanations about test purposes and use, clear explanations of test results and their consequences, review of records, and confidentiality as allowed by law. Well-prepared proctors will be able to deal with the questions posed because test takers are aware of their rights. Presenting a list of rights and answering questions might alleviate concerns of test takers about the appropriateness of test questions and might forestall litigation of the Soroka type. (SLD)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Use of a Statement of Test Taker Rights in Employment Testing[1]

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Abstract

Professionals seem often to view guidelines, standards, and the like--not to mention legal mandates--as adding to their work load. This article argues that a widely-promulgated set of test taker rights would actually make personnel selection professionals' work easier.

Use of a Statement of Test Taker Rights in Employment Testing

I want to take the somewhat unusual tack of describing why I think a statement of test taker rights will benefit professional personnel testers (in addition to examinees). Imagine the following scenario:

> You're applying for a job as a security guard in a large department store. After completing the usual application form you are told that you will need to take a test. You are ushered into a room with dozens of other applicants. A proctor asks you to read the instructions on a test booklet that is waiting for you at your seat, while he reads them aloud. After completing the instructions, the proctor asks if there are any questions. Since the test simply consists of statements to be marked "true" if they apply to you and "false" if they do not, no one has any questions. So, the proctor asks you to complete the test. You find yourself responding to items that seem peculiar, but innocuous. Things like, "I like mechanics magazines." Pretty soon though, you get to items that are both peculiar and not so innocuous. You encounter items like, "I feel sure there is only one true religion;" "Everything is turning out just like the prophets of the Bible said it would;" and "I believe in the second coming of Christ." Even though you don't have strong

religious feelings, this strikes you as an unwarranted invasion of your privacy. You wonder, "What has this got to do with being a security guard?". You go ahead and complete the test and, as a matter of fact, you get the job. However, you, and some of your co-workers, continue to be bothered by those test items, especially by the thought that some applicants may have been denied the store security positions by virtue of their responses to these items. So you and your co-workers sue, claiming that your constitutional right to freedom of religion was abridged by those test items. And you win.

Everyone who does personnel selection knows what I am refering to. Such a scenario took place in California. The court case was called Soroka v. Dayton-Hudson Corporation (1991)[2]. Every personnel tester's nightmare come true.

Now re-imagine the scenario I just gave you--with the following modifications:

When you reach your seat in the testing room you find a page entitled, "Rights of Test Takers." That page includes the following 12 points:[3]

As a test taker, you have:

1. The right to be informed of your rights as a test taker.
2. The right to be treated with courtesy, respect, and fairness.

3. The right to consent to testing or refuse to be tested.
4. The right to know, in advance, schedules and fees for testing services.
5. The right to qualified testing service providers whose qualifications are disclosed to you upon request.
6. The right to be tested with measures appropriate for you.
7. The right to be informed, prior to testing, about the test's purposes, nature, and use.
8. The right to timely test services.
9. The right to a clear explanation of your test results and their consequences.
10. The right to review records of your testing and correct inaccuracies.
11. The right to confidentiality to the extent allowed by law.
12. The right to present any concerns that you may have and receive information about procedures that may be used to resolve them.

At the bottom of the page it says, "Further details about these general principles are available upon request."

The poor test proctor moans as she anticipates dealing with the rabble that is going to be created when she reads these rights to the job applicants. Sure enough, as soon as she has read the rights a clamor breaks out:

"You mean I don't have to take this test if I don't want to? Well, I don't want to!" "Fees? What fees? You mean I have to pay to take this test?" "What is this test all about? I want to know or I'm not going to take it." "When do I get the explanation of my test results?"

What is the proctor to do? I submit that the well-prepared proctor will be able to deal with any one of these questions in such a way that, more often than not, the other questions will not even be asked. The answer to the first question will create such an impression of competence and humanity that the test-takers will be willing to trust the proctor on the remaining issues.

Consider the first question, "You mean I don't have to take this test if I don't want to?" The well-prepared proctor will use this as an opportunity not just to answer the question, but to make a short speech that touches on some of the other test-taker rights:

"No, you don't have to take the test if you don't want to. However, we consider the test essential in helping us determine who to hire. Companies that use this test have found that it increases their chances of hiring a successful security guard by 25%. We have also found that, because of the nature of the job, unsuccessful security guards sometimes create problems for themselves as well as for the company. Security guards who mishandle their duties sometimes wind up as defendants in a lawsuit filed by a patron. For these

reasons, we do everything we can to hire the right people. We don't make firm job offers without positive results on the test we're asking you to take. We believe that to do so would be unfair to our customers, to our company, and to the people we hire to work for us."

Cynics will say that the supposed right to refuse testing is illusory in this case. Denial of employment is a very serious consequence of refusing to be tested; nevertheless, the choice is real. I believe that, offered the choice in writing, and offered the foregoing explanation by the proctor, you would feel far less coerced than you would in the first, "Here, take this test," scenario.

Would this approach to personnel testing have prevented the Soroka case from being brought? Perhaps not--we will never know. However, I think it is reasonable to suppose that presenting the Soroka plaintiffs with a list of rights might have created an atmosphere in which they felt safe raising their concerns with the test proctor. I also believe that a personnel selection professional responsible for the implementation of the testing program might have been able to allay those concerns. If not, I would like to think that the testers would have rethought, and perhaps changed, their testing program. I feel certain that these kinds of efforts would have, at the very least, given the Soroka plaintiffs pause.

References

Soroka v. Dayton-Hudson Corporation, No. A052157 (Cal. Ct. App. 1991).

Test Taker Rights Working Group (1994). The rights of test takers (5th rev.). Unpublished manuscript.

Author Note

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This manuscript was prepared under the auspices of the Joint Committee on Testing Practices which is sponsored by the American Counseling Association, American Psychological Association (APA), American Speech-Hearing-Language Association, the National Council on Measurement in Education, and the National Association of School Psychologists. The author is one of two members of the Test Taker Rights Working Group sponsored by APA.

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Footnotes

[1]This manuscript is a slight revision of the paper of the same name presented on April 20, 1995 in W. D. Schafer (Chair), Test Takers' Rights. Symposium conducted at the annual convention of the National Council on Measurement in Education, San Francisco.

[2]Soroka reached an out-of-court settlement with Dayton-Hudson while the case was under review by the California Supreme Court. However, the fact that this rendered the case questionable as a legal precedent is not important for present purposes.

[3]These rights are modified from the 11 superordinate rights found in The Rights of Test Takers (5th rev.). The modifications are the responsibility of the present author and should not be attributed to the Test Taker Rights Working Group as a whole.